

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3979 OF 1995

Waman s/o Bhivaji Ingole
r/o at & Po: Bhandegaon,
Tq.Hingoli, Dist. Parbhani.

(died)

Through L.Rs.

Smt. Jankabai wd/o Waman Ingole
R/o Bhandegaon, Tq. Hingoli.

... Petitioner

Versus

1. The Superintendent Engineer,
EHV Construction Circle,
MSEB, Shkti Sahakar Bldg.
Aurangabad.
2. The Executive Engineer,
EHV Construction Divn.
MSEB Old Power House Bldg.
Campus, Parli-Vaidyanath,
Dist. Beed.
3. The Asstt. Engineer,
EHTV Line Sub-divn.
MSEB, Nanded.

...RESPONDENTS

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Mr. A.S.Kale, Advocate h/f Mr. S.B. Talekar, Advocate for
Petitioner;
Mr. D.P.Palodkar, Advocate for Respondent No.1, 2 and 3.

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CORAM: P.R.BORA, J.

DATE : June 30th, 2016.

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JUDGMENT:

1. Shri D.P.Palodkar, learned Counsel appears for Respondent nos. 2 and 3. Service Complete.

2. Present petition is filed against the judgment and order dated 20.2.1990 passed by the Labour Judge, Aurangabad, in Complaint (ULP) No.73/1986. Since the said judgment was challenged by the petitioner by filing Revision Application bearing Revision (ULP) No.86/1994, before the Industrial Court, Jalna, and the same was also dismissed by the said Court on 21.2.1995, the petitioner has assailed the said judgment and order also.

3. During the pendency of the present petition, the petitioner died and his legal heir was brought on record who has prosecuted the present petition further.

4. Petitioner was in the employment of the

respondents as a Driver. He was dismissed from the services vide order passed by respondent no.2 with effect from 8.5.1986. Before his dismissal, a Departmental Enquiry was conducted against him on an allegation that, in intoxicated condition he, unauthorizedly, drove the vehicle of the respondent Board, and caused an accident, hitting a truck of the respondent Department bearing Truck No.MHB 9056 and also to another vehicle bearing No.MHB-9069 and also a trolley bearing registration No.MHB 8344 which was stationed in the premises of the Nanded office of the respondents. It was also alleged that the petitioner had also hit one electric pole. Petitioner was further alleged to have caused loss to the property of the respondents. The charges of gross negligence, indisciplined behaviour, breach of Rules, Regulations, Circulars, abuse of Board's property, unauthorized use of the vehicle of the Board, etc. were levelled against him and a departmental enquiry was conducted against him. Petitioner was held guilty in the Departmental Enquiry so held and having regard to the serious charges proved against the petitioner, punishment of dismissal was imposed on him. Petitioner availed the remedy of filing

appeal before the Departmental authorities but could not get any relief. The punishment of dismissal imposed on him was not disturbed. Petitioner, therefore, filed a complaint before the Labour Court alleging unfair labour practices on the part of the respondents. The Labour Court, however, did not find any merit in the complaint so filed by the petitioner and hence dismissed the complaint. Petitioner challenged the said order before the Industrial Court by filing Revision Application, however, the same also was rejected by the Industrial Court. Petitioner, eventually, preferred the present writ petition challenging the order passed by the respondents and also the orders passed by the Labour Court and the Industrial Court.

5. Shri A.S.Kale, learned Counsel, holding for Shri S.B.Talekar, learned Counsel for the petitioner submitted that, false charges were levelled against the petitioner at the instance of one Shri R.P.Gaval, the Assistant Engineer, and false departmental enquiry was conducted against the petitioner. Learned Counsel further submitted that no proper opportunity was given to the petitioner of defending himself in the departmental proceedings. Learned

Counsel further submitted that Shri R.P.Gaval, at whose instance the complaint was filed against the petitioner, acted as a Board representative in the departmental enquiry proceedings and on this count alone, the enquiry proceedings are liable to be vitiated. Learned Counsel taking me through the report of enquiry and the evidence adduced in the departmental enquiry proceedings, submitted that no such evidence has come on record on the basis of which the charges levelled against the petitioner can be said to have been proved. Learned Counsel further submitted that the witnesses who were examined in the departmental enquiry were not present at the relevant time on the spot and, as such, could not have deposed anything about the alleged incident, however, the enquiry officer has blindly relied upon their evidence. Learned Counsel submitted that the petitioner got acquitted in a criminal case which was instituted against him in connection with the same incident on the basis of which departmental proceedings were initiated against him. Learned Counsel submitted that in view of the acquittal recorded by the competent Criminal Court, the findings recorded in the departmental proceeding need to

be quashed and set aside. Learned Counsel submitted that the Labour Court as well as the Industrial Court, unfortunately, failed in appreciating the objections raised by the petitioner as regards to the departmental enquiry proceedings and erroneously held the enquiry to be fair and proper and the finding recorded by the enquiry officer to be not perverse. Learned Counsel, therefore, prayed for setting aside the orders passed by the Labour Court as well as the Industrial Court and, consequently, to set aside the order of dismissal and to direct reinstatement of the petitioner with continuity of service and full backwages.

6. Opposing the submissions advanced on behalf of the petitioner, Shri D.P.Palodkar, learned Counsel appearing for the respondents submitted that after having considered the evidence on record, the Labour Court has recorded a finding that the departmental enquiry conducted against the petitioner was fair and proper. Learned Counsel further submitted that by recording reasons the Labour Court has held that the findings recorded in the enquiry are not perverse. Learned Counsel further submitted that considering the serious

charges proved against the petitioner in the departmental enquiry, the Labour Court has also held the punishment of dismissal to be proper and has, therefore, refused to cause interference in the said order. Learned Counsel further submitted that in the Revision (ULP) filed by the petitioner before the Industrial Court the issues which are raised in the present petition were raised by the petitioner but the Industrial Court has turned down all those objections and has confirmed the order passed by the Labour Court. Learned Counsel submitted that the order passed by the Courts below are well reasoned orders and no interference is called for in the order so passed. Learned Counsel submitted that in the departmental proceedings the principles of natural justice were scrupulously followed and no material has been brought on record by the petitioner so as to show that he was deprived of any opportunity to defend himself in the said proceedings. Learned Counsel, therefore, prayed for dismissal of the petition.

7. After having considered the submissions made on behalf of the learned Counsel appearing for the respective parties and on perusal of the impugned

judgment and the material on record, apparently, there seems no reasons for causing any interference in the orders respectively passed by the Labour Court and the Industrial Court impugned in the present petitions. From the material on record it is quite clear that in the departmental proceedings conducted against the petitioner the procedure prescribed under the law was scrupulously followed. Nothing has been brought to my notice so as to differ from the finding recorded by the Labour Court as about fairness of the enquiry conducted against the petitioner.

8. Having regard to the material on record, there seems no substance in the allegation made by the petitioner that the evidence of the witnesses recorded in the departmental proceedings could not have been relied upon. Nothing has been brought on record by the petitioner to show as to why the witnesses deposed against him in the departmental proceedings. The further contention of the petitioner that since the competent Criminal Court has acquitted him of the charges, the finding in the enquiry proceedings cannot be

sustained also cannot be accepted. It is well settled that in a criminal case where the offence alleged against the accused is to be proved beyond reasonable doubt, in the departmental proceedings the conclusions are drawn on the basis of pre-ponderance of probabilities. Acquittal in a criminal case may not have any impact on the findings recorded in the departmental enquiry proceedings.

9. After having perused the entire material on record, it does not appear to me that any case is made out by the petitioner for causing interference in the orders impugned in the present petition. The doctrine of proportionality was pressed by the learned Counsel in submitting that the nature of misconduct alleged against the petitioner was of not that serious nature for imposing ultimate punishment of dismissal. This submission must also be rejected in view of the fact that the charge against the petitioner was that he, in a drunken condition, unauthorizedly drove the vehicle of the respondents and consecutively hit three vehicles causing huge damage. The petitioner also is alleged to have hit an electric pole. Such disorderly behaviour of a person employed as a

driver is to be viewed seriously and no leniency can be shown in such cases. It does not appear to me that the punishment awarded to the petitioner of dismissal was in any way disproportionate.

10. The Writ Petition is devoid of any substance and deserves to be dismissed and is accordingly dismissed without any order as to costs. Rule discharged.

(P.R.BORA)
JUDGE

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AGP/3979-95wp